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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 714

MACCLENNY TURPENTINE COMPANY, A FLORIDA CORPORATION, ET AL.,

Petitioners,

vs.

BALDWIN DRAINAGE DISTRICT, A PUBLIC CORPORATION, ET AL.

REPLY BRIEF FOR PETITIONERS

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Statement

Respondents' brief presents nothing on the merits of petitioners' case. The whole effort of counsel for respondents is to shut off and prevent any consideration of the merits. The majority opinion of the Supreme Court of Florida likewise took a short cut and avoided any discussion or consideration of the merits.

Petition Does Comply With Rules of This Court

The contrary is argued pages 2 and 3 of respondents' brief. The argument is based on rule 12 upon the assumption that rule 12 is bodily incorporated into rule 38. Our

understanding is that each rule has a proper field of operation. The first sentence of rule 38 (2) specifies four requirements. The petition here has those four requirements. Nevertheless counsel for respondents contend that the "questions presented" and "reasons relied on" should all have been embraced in a "jurisdictional statement" such as contemplated by rule 12. A comparison of rule 38 with rule 12 shows no such intent. Rule 12 in setting forth the requirements of the "jurisdictional statement" includes, a, b, and c, requirements, also "a statement of the grounds upon which it is contended that the questions involved are substantial". This requirement is covered by the "questions presented" clause and the "reasons relied on" clause of rule 38. Therefore, the subject matter of those two clauses of Sec. 38 take the place in part of the "jurisdictional statement" called for by rule 12.

The opinion of the Supreme Court of Florida is cited and briefly analyzed pages 1 to 4 of the petition thus showing what was involved and how decided by the State Court.

The "Basis of Jurisdiction" statement page 6 of the petition cites the correct code section and the dates of the several orders of the Supreme Court of Florida, thus making it appear that the petition is timely. This brief statement of "Basis of Jurisdiction" is then followed by an amplified statement of "Questions Presented" and by a concise statement of "reasons relied on".

Six Federal Questions Are Presented

At page 3 of respondents' brief it is asserted "No Federal Question is Presented for Decision." Following that assertion, counsel on page 4 of their brief quote certain partial paragraphs of the bill of complaint as quoted on certain pages of the petition, but in so doing they omit other very important parts of the bill of complaint quoted in the

petition. They go so far as to assert near the bottom of page 4:

> "There is no specific reference to any particular section of the Federal Constitution."

Whereas after quoting certain parts of the bill at page 13 of our petition we then quoted an important paragraph from Section VI of the bill, R. 27, where it is specifically charged that if the general drainage law be so construed as warranting or authorizing the inclusion of such four separate and distinct watersheds wholly unrelated in interests in various ways, necessitating imposing upon all the lands common burdens for whatever improvements might be made in any part of such an area, then said Statute and all provisions thereof undertaking to vest such authority were void because contrary to the due process and equal protection clauses of Sec. 12 of the State Bill of Rights and:

> "In violation of the due process and equal protection clauses of the *14th amendment to the Federal Constitution.*"

Counsel for petitioners take no account of the well settled rules stated by this court in *N. C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 415 quoted page 12 of our petition to the effect that:

> "A statute valid as to one set of facts may be invalid as to another"

In Sec. VI of the bill of complaint as analyzed in our petition, the constitutionality of the general drainage laws was attacked as applied to the inclusion of four separate distinct and unrelated watersheds in one district and as applied to the subsequent spreading of common burdens upon petitioners' lands for large sums of money expended

or wasted in other watersheds without one penny's benefit to the lands of any of the petitioners. Such application of the law we contended and still contend violated the due process and equal protection clauses of the 14th amendment. The contention was plainly stated in the face of the bill R. 27 and R. 28, yet counsel for respondents assert no Federal question was presented. *Tregea* v. *Modesto Irrigation District*, 164 U. S. 179.

At bottom page 2 of respondents' brief, two cases involving a different district are cited wherein it was held that the General Drainage Law of Florida was valid but that doesn't answer the attack here made as applied to the particular facts and situations shown by petitioners' bill. In the same connection, counsel cite at top page 3 of their brief, *Duval Cattle Company* v. *Hemphill*, 41 Fed. 2d 433, but again counsel omit to state what was presented by the record in that case. The opinion of the 5th Circuit shows that the principal defense relied upon by Duval Cattle Company was alleged payment of the drainage taxes in question. That defense was held insufficient for reasons stated in the opinion. The answer filed in that case also attempted to claim that the district was made up of noncontiguous areas due to the fact that the rights-of-way of the Seaboard Railroad and Atlantic Coast Line Railroad were not included in the district and that those rights-of-way crossed each other in such fashion as to create seven unconnected areas of land in the district. The court properly held there was no merit in that contention because the record showed that the drainage ditches were dug across those rights-of-way as much so as if they had not been there and that the rights-of-way did not otherwise prevent the lands on opposite sides of any particular piece of right-of-way from being contiguous, for drainage purposes. No attempt was made in that case to raise the question of separate and distinct watersheds or the imposition

of common burdens on each watershed for drainage improvements or monies wasted in other watersheds. That question now presented by Sec. VI of this bill has never heretofore been raised or passed upon by any court where a Florida drainage district was involved.

Each other question presented pages 7 to 31 inclusive of our petition clearly shows the presence of a Federal question which the petitioners are entitled to have reviewed by this court. This is very clear as to question 4 presented page 17 of our petition which is based upon sections VIII, XII, and XIII of the amended bill and the quotations therefrom such as found in the petition pages 19 to 23 inclusive. That question again attacks the application made of the statute. The Supreme Court of Florida evaded saying whether that application was good or bad. It simply disposed of the case by holding that the petitioners could not be heard because some former owner or owners in the distant past may have acquiesced by failing to bring such a suit as this one.

Non-Federal Ground of Alleged Acquiescence Is Without "Fair or Substantial Support"

The contrary of this proposition is vigorously urged pages 8 to 12 of respondents' brief.

We anticipated the contention of opposing counsel by the citation of four decisions of this court on that question at page 5 of our petition. The cases cited by opposing counsel, recognize the same rule stated in the cases cited by us. The only difference between us is whether the application of the rule to the record in this case means "thumbs up" or "thumbs down" on the issuance of the writ of certiorari. We think a brief analysis of the cases cited, pro and con will clearly show that the non-Federal ground resorted to by the Supreme Court of Florida did not have "fair or

substantial support", and therefore did not warrant the court's evasion of the Federal questions presented.

In *Enterprise Irrig. District* vs. *Farmers Mut. Canal Co.* 243 U. S. 157, 164-165, 61 Law Ed. 644, 649 this court stated the rule we think applicable in this case:

> "Our jurisdiction is plain * * * where the non-Federal ground is so certainly unfounded that it properly may be regarded as essentially arbitrary, or a mere device to prevent a review of the decision upon the Federal question."

In that case there was ample ground for holding that the complaining party was estopped by its prior conduct. Hence this court held that the non-Federal ground of estoppel was sufficient basis for the State Court's decision.

In *Petrie* vs. *Nampa & Meridian Irrigation District*, 248 U. S. 154, 63 Law Ed. 178, the State Court held that the attack which the plaintiff sought to make was *premature*. This court held that non-Federal ground adequate to support the court's decision.

In *Broad R. P. Co.* vs. *South Carolina Ex Rel. Daniel*, 281 U. S. 537, 74 Law Ed. 1023, the court stated the rule as follows:

> "Whether the state court has denied to rights asserted under local law the protection which the Constitution guarantees is a question upon which the petitioners are entitled to invoke the judgment of this court. Even though the constitutional protection invoked be denied on non-Federal grounds, it is the province of this court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded."

When that rule was applied, the court found that the non-Federal ground set up in the State court was adequate, hence the writ of certiorari was dismissed.

In *Utley* v. *City of St. Petersburg*, 292 U. S. 106, 78 Law Ed. 155, the appellants attacked the application of the well known "front foot rule" used as a means of apportioning the cost of paving improvements in front of the appellants' lands. This court held first that the Federal question asserted was not substantial because this court had in many prior decisions upheld the application of such a rule. In the second place, it appeared that the appellants had stood by without objection while their properties were being improved and that they had refrained from making use of remedies both administrative and judicial open to them while they knew their properties were being so improved. Then after a lapse of 5 years when the improvement was complete and municipal obligations incurred in connection therewith, they sought to attack the validity of the assessments. This court concluded that the non-Federal ground of estoppel set up by the Supreme Court of Florida was "genuine and adequate" to support the decision. Hence an appeal was dismissed. We have no such case at bar. Many sections of appellants' lands such as sections 4, 5, 6 and 19 in their watershed were entirely abandoned and no ditch was ever dug anywhere in their vicinity. Some 4000 acres of appellants' lands were annually damaged by flooding and never benefited. No ditch was ever made efficient in any lands in appellants' watershed because of no proper outlet. Appellants' predecessors in title, at least those not claiming through tax deeds, repeatedly protested as set forth in Section XIV of the bill about flood conditions and otherwise. No pretense of maintenance has ever been made in petitioners' watershed or anywhere else in the district. The supervisors as shown by Sec. XII of the bill by their resolution of February 13, 1918 secretly changed the original decree without authority of law as provided by what is now Sec. 1491 Compiled General Laws. At the same time they secretly changed the plans of reclamation in many

particulars such as wholly omitting many sections from any improvements whatsoever without any pretense of complying with what is now Sec. 1500 Compiled General Laws. They also secretly awarded a cost-plus contract to their banker friend who wasted large sums of money in other watersheds. They secretly put out two additional bond issues without making any record thereof and they actually falsified their records to prevent property owners from knowing what was going on. In doing all these things, the supervisors were acting purely as the agents of the Drainage District and not otherwise. *Tregea* v. *Modesto Irrigation District*, 164 U. S. 179, 186. There was no standing by, and no receipt of benefits and no acquiescence with full knowledge as in *Utley* v. *City of St. Petersburg*. *Shepard* v. *Barrow* 194 U. S. 553 is distinguishable on similar grounds. See 48 Am. Jur. page 795, notes 18, 20 and 1.

One of the cases cited page 5 of our petition is *Ancient E. A. O.* v. *Michaux*, 279 U. S. 737, 745. There again this court stated the rule:

> "It is our province to inquire not only whether the right (Federal right) was denied in direct terms, but also whether it was denied in substance and effect by interposing a non-Federal ground of decision having no fair support."

The State Court had, like the Florida Supreme Court here, undertaken to bar relief on the ground of laches but this Court said:

> "An attentive examination of the record discloses that not only the finding on the question of laches is without support in the evidence, but that the evidence conclusively refutes it."

When a similar examination of the record is made in this cause, it will appear as pointed out in our petition that the supervisors of the district, in cooperation with the dis-

trict engineer and their banker friend McCarthy, were diligent in concealing from property owners what was actually going on, in the matter of changing the plans of reclamation, in changing the original decree and in making new cost-plus contracts without any competitive bidding and in wasting money in other watersheds, and in issuing successive issues of bonds without any application to the court for validation.

It is axiomatic that there can be no acquiescence or waiver without knowledge of sufficient facts to take effective measures to protect one's interest.

In *Pence* v. *Langdon*, 99 U. S. 578, 581; 25 Law Ed. 420, 421 this Court said:

> "Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import this foundation for such action. One cannot waive or acquiesce in a wrong while ignorant that it has been committed. Current suspicion and rumor are not enough. There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do."

This is the rule accepted by a great number of American and English cases. See: 29 American English Encyclopedia of Law 2d Ed. page 1093 subject "Waiver" 13th footnote.

We think the correct rules on the subject of acquiescence, waiver or estoppel are also stated in 48 Am. Jur. subject "Special or Local Assessments", Secs. 296 and 311, pages 783 and 796 as follows:

> "The general rule is that objections to a special or local assessment relating to original want of jurisdiction in a body conducting the proceedings leading to an assessment, or to jurisdictional defects and irregularities in such proceedings, or other matters voiding the assessments, are not subject to the operation of an estoppel of or waiver by a property owner, whether

> the estoppel is sought to be based on the signing of the petition for the improvement, a failure to pursue a prescribed remedy within the time limited, failure to appear or to make objections at a hearing, specification of other objections, failure to appeal, acquiescence, payment of an assessment or any part thereof, connecting with the improvement in question, or other ground, * * * Where * * * an apportionment or calculation is unfair and arbitrary so that it voids the assessment, the general rule that voidness of an assessment is not within the operation of an estoppel of the property owner has been applied."

In the case at bar, the averments of Sees. VI, VIII, XII, XIII and XIV of the bill—all admitted by the attacking motions—show that the assessments complained of were utterly void and not merely voidable. Also that they were wholly unfair and arbitrary and that the same character of assessments are continuing year after year and will continue in the future unless some relief is granted.

In the case of *Myles Salt Co.* v. *Board of Commissioners*, 239 U. S. 478; cited page 5 of our petition was a suit of the same character as the one at bar. There the plaintiff sought to restrain the Drainage District from collecting drainage taxes levied during a period of four years prior to the filing of the bill. The Appellee district and its commissioners sought to dismiss the writ of error contending that the plaintiff had not sufficiently asserted a Federal right, that under the law of Louisiana such an attack could not be made in the absence of a special averment of fraud which was not pleaded and that the decision was grounded upon the local law adequate to support the decision. This Court brushed aside both contentions and delivered an opinion which has stood out as a beacon light in similar cases ever since. *Georgia R. & E. Co.* v. *Decatur*, 295 U. S. 165, 170 Ed. 1365, 1369; *Duncan* v. *St. Johns Levee & D. Dist.*, 69 Fed. 342 (8 C. C. A.).

At bottom of page 11 of respondents' brief the case of *Pierce* v. *Somerset Railway*, 171 U. S. 641, is cited and quoted for the proposition that the State Court may destroy any right of review on a Federal question, by resorting to the device of placing its decision on a non-Federal ground. In the *Pierce* case, however, the non-Federal ground was ample to warrant the decision sought to be reviewed, therefore, when so understood that decision is consistent with later decisions announcing the rule as above quoted from *Broad R. P. Co.* v. *South Carolina supra*, and *Ancient E. A. O.* v. *Michaux supra*, and also stated in *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282, 76 Law Ed. 1102, 1107.

"Questions Presented" Are Severally Meritorious

At page 12 of respondents' brief counsel assert that Question 1, page 7 of our petition is without merit because the contract cannot be impaired by change of judicial decision within the meaning of the contract clause of the Federal Constitution. It may be that *Louisiana* v. *Pillsbury* and the *Anderson* case cited page 9 of our petition are inadequate to sustain that phase of question 1 because it does appear from the decision delivered by Chief Justice Taft in *Tindal Oil Co.* v. *Flanagan*, 263 U. S. 444, 453, that *Louisiana* v. *Pillsbury* and another case were distinguished on the ground that a subsequent statute was so construed as to impair a prior contract. Even so, the second headnote of the *Flanagan* case (68 Law Ed. 383) shows that if the act of February 17, 1922 had not been repealed by the act of 1925 jurisdiction would attach where property rights had vested under prior decisions and then the property rights were destroyed by subsequent decision. There is, however, a second phase to question 1, and that is that the decision of the Supreme Court of Florida, as applied to the tax title owners who acquired independent titles from

the State, in effect deprived them of all right to be heard and therefore amounted to a denial of due process of law, contrary to the 14th amendment. It is perfectly competent to claim that the decision of the Supreme Court of Florida denied such Federal right and that contention could not have been presented until after the decision was rendered and after we had exhausted our efforts to obtain correction by petitions for rehearing. This situation was observed by Chief Justice Taft in the *Flanagan* case. It has frequently been held by this court that such a decision of the highest court of the state may constitute in and out itself a denial of due process, contrary to the 14th amendment. See: *Georgia R. & Electric Co.* v. *Decatur*, 295 U. S. 165, 171; 79 Law Ed. 1365, 1370, citing many prior decisions beginning with *Saunders* v. *Shaw*, 244 U. S. 317, 319; 61 Law Ed. 1163, 1165.

Question 1, page 7 of our petition, Reason A page 32 of our petition and the first assignment of error page 38 of our petition and brief, all present this latter element of denial of due process of law resulting from the Supreme Court of Florida's change of decision destroying a rule of property theretofore long established and denying to petitioners any right to be heard because of alleged privity with former owners all contrary to the prior decision of the Supreme Court of Florida and contrary to the prior decisions of this court. That particular phase of the decision of the Supreme Court of Florida also emphasized the point that the alleged non-Federal ground of acquiescence was without "fair or substantial support" especially as applied to tax title owners and tax certificate owners.

Question 2, page 9 of our petition, Reason B, page 32 of our petition, and assignment of error 2, page 39 of our supporting brief, deal with the same subject. That is to say that the effect of the Florida Supreme Court's opinion as to both classes of ownerships—tax title ownerships as

well as non-tax title ownerships—was to deny a hearing, contrary to the due process and equal protection clauses of the 14th amendment. That point is well supported by the opinion of this Court in *Ohio Bell Telephone Company* v. *Public Utilities Co.*, 301 U. S. 302, 306, 307, also by *Georgia R. & Electric Co.* v. *Decatur*, 295 U. S. text 171 *supra*, and cases there cited.

Question 3, page 12 of our petition and Reason C page 32 of our petition and assignment of error 3, page 39 of our supporting brief, all deal with what is charged as being an unconstitutional application of the General Drainage Law of the State in consequence of which petitioners were and will be, deprived of their properties without due process and without equal protection of the laws as guaranteed by the 14th amendment. Pages 12 to 16 of our petition show that this Federal question was clearly and distinctly presented by the bill. Cases cited pages 15 and 16 of our petition, clearly show the merits of the point. The decisions there cited are in harmony with the general trend of authority, as recently stated in 48 Am. Jur. subject "Special or Local Assessments," page 580 Sec. 21 as follows:

> "The general rule is that a special or local assessment is justified and authorized by, and is unconstitutional and invalid without, a special benefit to the property assessed, resulting from a special or local public improvement. The assessment is regarded as compensation for such special benefit."

In support of this text, decisions of this court and of practically every court in the Union are cited.

Question 3 and the averments of the bill cited and quoted pages 12 to 16 of our petition, show that the supervisors of this district acting secretly as the agents for the district (See *Tregea* case supra), deliberately undertook to appropriate the properties of the petitioners and their predeces-

sors in title and bestow the same upon the bondholders of the district now chiefly consisting of Mr. J. W. Harrell the dominating and controlling bondholder of the district who also happens to be associate counsel for the respondents before this court. In the case of *Wilkinson* v. *Leland*, 2 Peters 627, 646; 7 Law Ed. 542, 549 Mr. Webster said:

> "It is as if A, a creditor of B, should go to the Legislature and ask that B's property be transferred to him without a trial. It is a condemnation without a hearing, a confiscation of property in time of peace."

In 2 Peters, text 658 and in 7 Law Ed. text 553, Mr. Justice Story delivering the opinion of the court agreed with Mr. Webster by saying:

> "We know of no case in which a legislative Act to transfer the property of A to B without his consent has ever been held constitutional exercise of legislative power in any State of the Union. On the contrary, it has been constantly resisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced."

If it is thus incompetent for a Legislature to confiscate or transfer property from A to B, then much more so was it incompetent for the supervisors of this Drainage District to accomplish the same result. The fundamental rights of the petitioners and their predecessors in title, protected by the 14th Amendment, have been and continue to be violated. Yet the Supreme Court of Florida undertakes to approve the same on the formula that notwithstanding the averments of the bill, some former owner "could have protested."

Question 4 stated page 17 of our petition and reason D stated page 33 of our petition and assignment of error 4, stated page 39 of our supporting brief, point out further that the proceedings of the supervisors as complained of

in Section VIII, XII and XIII of the bill operated to deprive then existing landowners and petitioners of any hearing whatsoever as required by what is now sections 1491 and 1500, Compiled General Laws of Florida, all with the result that petitioners and their predecessors in title have never had any day in court with respect to the original assessments of benefits which the supervisors continued to use as a basis for tax levies after they had illegally attempted to change the original decree and the plans of reclamation. In short the attempted proceedings of the commissioners as complained of in Sections VIII and XII of the bill were without jurisdiction under the drainage law and wholly void as well as depriving petitioners and their predecessors in title of all hearing and all opportunity to be heard. The doctrine of *Browning* v. *Hooper* quoted page 23 of our petition was clearly violated. The Supreme Court of Florida gave no heed to that proposition though strenuously urged in the bill itself and by the numerous arguments submitted to that court. The court attempted to shut the door on the ground of acquiescence even though it was alleged by the petitioners and admitted by the attacking motions that the supervisors acting as agents for the district concealed their acts and doings.

Question 5, stated page 24 of our petition, and Reason E, stated page 34 of our petition, and assignment of error 5, page 39 of our supporting brief, point out additional reasons why petitioners and their predecessors in title were and are being deprived of their properties without due process of law, contrary to the 14th amendment.

The only suggested answer to questions 4 and 5, found in the brief for respondents, is alleged acquiescence and laches. We have already pointed out that no basis for acquiescence exists under the admitted allegations of the amended bill, neither does any basis exist for laches when we consider the parties, namely the respondents, who now

are undertaking to urge such matters. The district and its supervisors were the parties who falsified their records to prevent landowners, including the petitioners, from learning the true facts upon which they might have predicated a proper defense, or attack.

In *4 Pomeroy's Eq. Jur.*, 4th Ed., Sec. 1447, it is said:

> "A person cannot be deprived of his remedy in equity on the ground of laches, unless it appears that he had knowledge of his rights."

Again in the same volume, Sec. 1456, it is said:

> "It had been held that where the party interposing the defense of laches has contributed to, or caused the delay, he cannot take advantage of it."

The admitted averments of Sec. XII of the bill and related sections convict the supervisors of the district of illegal conduct and of secreting their conduct. The fact is, it required several months diligent search by the writer of this brief to uncover sufficient facts to institute this suit. Again it is axiomatic that no one can complain of laches any more than he can of acquiescence unless he has been injured thereby. Section XVI of the bill in this case specifically alleges no injury and no change of position. *Ketchum* v. *Duncan*, 96 U. S. 659, 666.

Question 6, stated page 27 of our petition, and Reason F, stated page 34 of our petition, and assignment of error 6, page 40 of our supporting brief, likewise remain unanswered by opposing counsel. The majority opinion of the Supreme Court of Florida was also entirely silent on the subject of whether or not maintenance taxes, past or future, could be justly enforced. Counsel for respondents undertake to sidestep this question as they have others by claiming that it was not properly presented so as to be competent for this Court's consideration. They say it wasn't

sufficiently raised in the bill and that it was too late to raise it by petition for rehearing. We think they are in error on both parts of their contention. In the first place, Sec. XV of the bill beginning R-69 in effect repleaded what had been said in prior sections attacking the levy of installment taxes for debt service purposes. The court will see, R-72 and R-73, that the averments of Sections VI, VIII and XIV dealing with attacks upon installment taxes, were in effect repleaded as attacks upon maintenance taxes and those sections specifically charged violation of the due process and equal protection clauses of the 14th amendment. In addition, Sec. XV of the bill concluded, R-74, with the averment that all maintenance taxes levied:

> "for said involvent and defunct district, were wholly arbitrary and amounted to a spoliation of plaintiff's properties."

Thus opposing counsel and the court below were clearly given to understand that reliance was placed upon the protection of the due process and equal protection clauses of the 14th amendment.

No particular form of words or phrases is essential to draw in question the validity of a State statute or the validity of some application of a State statute. *Greenbay & Mississippi Can Co.* v. *Patton Paper Co.*, 172 U. S. 58, 43 Law Ed. 364 (2d headnote, Law Ed.); *New York* v. *Zimmerman*, 278 U. S. 63, 73 Law Ed. 184 (1st headnote).

In addition to the attacks so made by Sec. XV of the bill itself, grounds 8, 9, 10 and 11 of the petition for rehearing, R-135, again specifically raised the question of the invalidity of maintenance taxes because inconsistent with due process and equal protection of the laws, secured by the 14th Amendment. Counsel urge that such a point was too late when raised by petition for rehearing. That

would be true if the Supreme Court of Florida had merely denied the petition and nothing more, but that did not happen. On the contrary the Supreme Court of Florida granted the petition in part on May 17, 1944, and set the same down for oral argument as to the part granted, see page 29 of our petition. Having considered the petition and having granted it in part, the order so granting it in part, in effect, denied grounds 8, 9, 10 and 11 thereof, which grounds specifically called the court's attention to the invalidity of maintenance taxes for constitutional reasons. *Great Northern Railway Co.* v. *Sunburst Oil & Refining Co.*, 287 U. S. 358, 367, 77 Law Ed. 360, 368 (7th headnote, Law Ed.).

It is true as stated bottom page 13 of respondents' brief that the Supreme Court of Florida finally held that the three-year General Statute of Limitations does not apply to drainage taxes. On May 9, 1944, the court rendered an opinion without dissent holding that the three-year Statute of Limitations did apply to drainage taxes, but on rehearing, they rendered another opinion without any dissent holding just the opposite. The two opinions are now reported 19 So. 2d, page 234. We submit, however, that the complete somersault of the Supreme Court of Florida on that question cannot aid the respondents in answering any of the questions now presented by our petition for certiorari. The simple reason is that we have not sought any review by this Court of the Supreme Court of Florida's last conclusion on that question of State law. If it be conceded that the Supreme Court's last opinion in the *Ideal Farms* case is correct, that is certainly no answer to the constitutional attacks we make on maintenance taxes as concisely stated page 27 of our petition.

Additional Reason for Writ of Certiorari:

J. THE UNITED STATES IS NOW A LARGE LAND OWNER IN THE BALDWIN DRAINAGE DISTRICT AND IF THE DECISION OF THE SUPREME COURT OF FLORIDA STANDS THE UNITED STATES CAN NEITHER SELL NOR DONATE ITS LAND TO ANY PRIVATE OWNER WHEN THE WAR ENDS.

The "Surplus Property Act of 1944" contemplated that landing fields and gunnery ranges such as acquired in the Baldwin Drainage district, 12 to 20 miles west of the City of Jacksonville shall be disposed of by sale or otherwise, to former owners or to veterans. 50 U. S. C. A. Sec. 1632(d) and (f).

Mention is made page 14 of respondents' brief of the case of *Bostwick* v. *Baldwin Drainage District* in which certiorari was denied, 319 U. S. 742. The record in that case may be judicially noticed in connection with the Surplus Property Act. By reference to the transcript in that case, it will be seen that the *Bostwick* case involved adverse claims to what was known as Duval Cattle Company lands foreclosed in the case of *Duval Cattle Company* v. *Hemphill* receiver 41 Fed. 2d 433. The attack on jurisdictional grounds made by Mrs. Bostwick as to said "decree lands" failed, because the doctrine of *res adjudicata* was too well entrenched to permit any break-through. There was involved in the same case however, many "non-decree lands" such as parcel 23, pages 35 and 26 of that record formerly owned by Mrs. Bostwick. The jury, page 273 of that record awarded $5.00 per acre for parcel 23 and many other parcels involved in that area of 2666 acres. A map page 231 of that transcript shows the location of all the lands in the Cecil Field tract including the "non-decree lands" of Mrs. Bostwick. The last line of page 71 of that transcript relates to 40 acres of Mrs. Bostwick's $5.00 lands and it there appears that the drainage taxes claimed

against that 40 acres for the years 1919 and 1941 inclusive amounted to $1106.35 or more than $27.00 per acre, or more than $1.00 per acre per year. Section VII, VIII, IX and X of the answer in that case, transcript 118 to 141 showed that the Bostwick lands lying along Sal Taylor Creek were never benefited one iota but were annually flooded by excess waters discharged into the upper course of that creek. That no drainage improvement whatsoever was ever created anywhere in the vicinity of those lands. Much the same showing was made as to those lands as with respect to the lands of the petitioners in the case at bar. The issues so tendered with respect to said "non-decree lands" were not decided in said *Federal* case, but were left undisposed of awaiting the decision of the Supreme Court of Florida in this case, see the Bostwick transcript page 275.

If the War ends in the near future and the decision of the Supreme Court of Florida stands unchanged, then Mrs. Bostwick or any other former owner would be foolish to buy their lands back from the United States at $5.00 per acre or any other price for the simple reason that the drainage district would again begin levying installment taxes and maintenance taxes against such lands in amounts that would in four or five years again completely eat up the value thereof. The same result would follow if the United States donated such lands back to Mrs. Bostwick and other former owners. Veterans of the present War would be in no better situation if the United States wanted to sell or donate such lands to them pursuant to the Surplus Property Act.

The situation as above explained with regard to the lands in the Cecil Field area of 2666 acres, applies equally to the "Yellow Water Gunnery Range" of some 9000 acres which the United States also took and now owns between Cecil

Field and the Seaboard Railroad as may be seen on the map page 231 of the Bostwick transcript and the same situation applies to some four or five other landing fields taken in the Baldwin Drainage District area. So long as the United States continues to own these lands, the power of the Drainage District to levy any further taxes is held in abeyance. 48 Am. Jur. page 641 Sec. 86. But if the United States offers to sell or offers to donate its lands to private parties, such prospective purchasers or donees will be immediately confronted with an annual drainage tax burden greater than they could carry on lands fit chiefly for cattle ranch purposes and not worth more than $5.00 per acre. The decision of the Florida Supreme Court is to the effect that a tax deed direct from the State leaves the land subject to all *past* and *future* drainage taxes. By the same token these United States lands, if passed to private ownership, will again be subject to these void and confiscatory drainage taxes.

We submit, therefore, that the late Surplus Property Act has made the United States a party directly interested in the outcome of this case. All of the holdings acquired by the United States in the Baldwin Drainage District, as the situation now stands under the decision of the Supreme Court of Florida, are worthless as regards any disposition to private ownership.

Conclusion

Petitioners have made a long and determined fight for their rights in this case.

In the case at bar, the petitioners after securing the consent of the Attorney General, attacked the existence of the district by *quo warranto* see *State* v. *Covington*, 148 Fla. 42, decided August 1941, where the petitioners or some of them failed because the court held that the district had "at least a defacto existence." This chancery suit was soon after-

wards filed. In the meantime various condemnation suits were filed as to lands in the Baldwin Drainage District owned by various clients of the writer. Answers were filed in those suits, setting up attacks upon the drainage taxes similar to those made in this chancery suit and the Federal Court has not yet made any disposition of funds awarded by the juries in those cases but is awaiting the outcome of this petition for certiorari.

During the 10-year period of the Federal receivership from 1924 to 1934 the records of the Drainage District were tightly kept in the hands of the receiver and his attorney. When the Federal Court discharged the receiver and dismissed all undisposed of tax foreclosure suits (R. 68) the affairs of the insolvent district went into a state of coma and remained so until this suit was filed seeking to clear petitioners titles of arbitrary, void and unconstitutional drainage taxes.

Ever since the signing of the Magna Charta we have supposed that for every wrong there is a remedy and that justice will neither be delayed nor denied.

We respectfully submit that a writ of certiorari should be granted.

Respectfully submitted,

THOS. B. ADAMS,
Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES.

MACCLENNY TURPENTINE COMPANY, A Florida Corporation, et al., Petitioners, vs. BALDWIN DRAINAGE DISTRICT, A Public Corporation, et al. Respondents.	)	CASE V14

MEMO FOR PETITIONERS

Since the preparation of reply brief in this case, we have noted the decision of the Supreme Court of Florida in Richmond vs. Town of Lenan now reported 19 So. 2d, 791 as decided by the Supreme Court of Florida, Nov. 24, 1944. The points decided by the Supreme Court of Florida in the Richmond case are in many particulars wholly inconsistent with the conclusion reached by the Supreme Court of Florida in this Baldwin Drainage District case. In short the Supreme Court of Florida in the Richmond case recognized and upholds the fundamental rights of property owners occupying situations similar to those of petitioners in this case. Briefly the court holds that:

> There can be no tax burdens even for general municipal purposes where there was no benefit and no prospect of any benefit to lands now excluded from the municipality because they never should have been included.

See also the 5th and 8th headnotes. These conclusions were reached in the face of arguments of laches and acquiescence vigorously urged by the same counsel who now represents the respondents in this cause.

Thos. B. Adams,
Attorney for Petitioners.